

**Letter of Findings: 99-20120614
Fireworks Public Safety Fee
For the Years 2009 and 2010**

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ISSUE

I. Fireworks Public Safety Fee – Assessment.

Authority: IC § 6-8.1-5-1; IC § 22-11-14-12; IC § 22-11-14-13; IC § 22-11-14-14; Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289 (Ind. Tax Ct. 2007).

Retail Merchant ("Retail Merchant") protests the imposition of the Fireworks Public Safety Fee ("FPS Fee") on its sale of fireworks.

STATEMENT OF FACTS

Retail Merchant is a sole proprietor who owns and operates a seasonal fireworks business. Retail Merchant's sales are both wholesale and retail. The Indiana Department of Revenue ("Department") conducted a sales and use tax audit of Retail Merchant for the years 2009 and 2010, as well as an FPS Fee audit for those years. For the years at issue, Retail Merchant was a seasonal filer for sales and use tax purposes. The Department's audit found that Retail Merchant had made taxable sales and did not have a record of exemption certificates for any of those sales. Therefore, pursuant to the audit, Retail Merchant was assessed additional sales tax, penalty and interest for the periods. Retail Merchant protested the assessment of additional sales tax and the assessment of the FPS Fee. There was also a small assessment of additional use tax which Retail Merchant did not protest. An administrative hearing was held on Retail Merchant's protests. Letter of Findings 04-20120615 addresses the protest of the sales tax. This Letter of Findings addresses the protest of the FPS Fee. Additional information will be provided as necessary.

I. Fireworks Public Safety Fee – Assessment.

DISCUSSION

As a threshold issue, although a statute that imposes a tax is strictly construed against the State, all tax assessments are prima facie evidence that the Department's claim for the unpaid tax is valid and the taxpayer bears the burden of proving that any assessment is incorrect. IC § 6-8.1-5-1(c); Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007).

Pursuant to IC § 22-11-14-12 a public safety fee is imposed on the retail sale of fireworks in Indiana:

(a) A user fee, known as the public safety fee, is imposed on retail transactions made in Indiana of fireworks, in accordance with section 13 of this chapter.

(b) A person who acquires fireworks in a retail transaction is liable for the public safety fee on the transaction and, except as otherwise provided in this chapter, shall pay the public safety fee to the retailer as a separate added amount to the consideration in the transaction. **The retailer shall collect the public safety fee as an agent for the state.**

(c) The public safety fee shall be deposited in the state general fund. The auditor of state shall annually transfer the money received from the public safety fee as follows:

(1) Two million dollars (\$2,000,000) shall be deposited in the regional public safety training fund established by [IC 10-15-3-12](#).

(2) Any additional money received shall be deposited in the state disaster relief fund established by [IC 10-14-4-5](#).

(d) The department of state revenue shall adopt rules under [IC 4-22-2](#) necessary for the collection of the public safety fee money from retailers as described in subsections (b) and (c).

(Emphasis added).

IC § 22-11-14-13 states that the FPS Fee is measured by the gross retail income received by a retail merchant in the retail sale of fireworks:

(a) The public safety fee is measured by the gross retail income received by a retail merchant in a retail unitary transaction of fireworks and is imposed at the following rates:

PUBLIC SAFETY FEE	GROSS RETAIL INCOME FROM THE RETAIL UNITARY TRANSACTION
\$ 0	less than \$ 0.10
\$ 0.01	at least \$ 0.10 but less than \$ 0.30
\$ 0.02	at least \$ 0.30 but less than \$ 0.50
\$ 0.03	at least \$ 0.50 but less than \$ 0.70

\$ 0.04	at least \$ 0.70	but less than \$ 0.90
\$ 0.05	at least \$ 0.90	but less than \$ 1.10

On a retail unitary transaction in which the gross retail income received by the retail merchant is one dollar and ten cents (\$1.10) or more, the public safety fee is five percent (5[percent]) of that gross retail income. (b) If the public safety fee computed under subsection (a) results in a fraction of one-half cent (\$0.005) or more, the amount of the public safety fee shall be rounded to the next additional cent.

IC § 22-11-14-14 states the obligation and personal liability of the retail merchant to collect the FPS Fee.

An individual who:

(1) is an individual retailer or is an employee, an officer, or a member of a corporate or partnership retailer; and

(2) has a duty to remit the public safety fee as described in section 12 of this chapter to the department of state revenue; holds the public safety fees collected in trust for the state and is personally liable for the payment of the public safety fee money to the state.

(Emphasis added).

Retail Merchant's protest of the FPS Fee was associated with its protest of the imposition of additional tax under the related sales and use tax audit of Retail Merchant. In that protest, Retail Merchant was arguing the gross retail transactions included exempt sales and also used estimated based on inflated inventory assumptions. Had Retail Merchant been sustained on its sales and use tax protest, its gross retail sales would have been reduced, thus reducing the FPS Fee. IC § 22-11-14-13. Retail Merchant, however, was denied on its protest of sales and use tax (Letter of Findings 04-20120615), therefore, the FPS Fee is not reduced.

Given all of the above, Retail Merchant is liable for the FPS Fee.

FINDING

Retail Merchant's protest of the assessment of the FPS Fee is respectfully denied.

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